IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2010

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.A.No.294 of 2000
& Crl.M.P.Nos.3628 of 2000, 9203 of 2001
and 12098 of 2002

A.Krishna Reddy ..Appellant/Complainant

Vs.

P.V.R.S.Mani Kumar ..Respondent/Accused

Criminal Appeal filed under Section 378(4) r/w Sec.382 Cr.P.C. against the judgment dated 6.12.1999 in Crl.A.No.127 of 1999 on the file of III Additional Sessions Court, Chennai, against the judgment dated 26.4.1999 in C.C.No.3316 of 1998 on the file of VII Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.A.N.Thambidurai
For Respondent: Mr.C.Rajan and
Mr.V.K.Sathiamurthy

JUDGMENT

The Criminal Appeal is taken up for disposal, on remand from the Supreme Court, by order dated 29.3.2007 in Crl.A.Nos.597 to 599 of 2003 and 775 of 2003, whereby, the Supreme Court observed as follows:

> "Without going into the merit of the case and in view of the fact that now new materials are available on record, we think it fit and proper to set aside the judgment of the High Court and remit the matter back to the High Court for consideration of the matter afresh in the light of the evidences adduced on behalf of the appellant."

2. The Criminal Appeal is filed against the judgment dated 6.12.1999 in Crl.A.No.127 of 1999 on the file of III Additional Sessions Court, Chennai, against the judgment dated 26.4.1999 in C.C.No.3316 of 1998 on the file of the VII Metropolitan Magistrate, George Town, Chennai.

3. The appellant as complainant, has filed a private complaint stating that the respondent-accused has borrowed money from him and

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after some time, the respondent-accused issued two cheques, one dated 31.3.1998 for Rs.6,60,000/- and another dated 31.3.1998 for Rs.7,25,920/-, both drawn on Syndicate Bank, Perambur, Chennai. The first cheque represented the principal amount and the second cheque represented the interest upto 31.3.1998. The appellant-complainant deposited the said cheques on 31.3.1998. Both the cheques were dishonoured by the Bank on 2.4.1998, stating "insufficient funds". The appellant-complainant issued lawyer's notice dated 6.4.198 and the appellant-complainant received reply notice dated 17.4.1998 and then, the appellant issued rejoinder on 21.4.1998 and filed the complaint in accordance with law, under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the N.I. Act').

4. The trial Court, after taking cognizance of the offence under Section 138 of the N.I. Act, issued summons to the respondent-accused and after questioning the accused, examining P.Ws.1 to 3 and D.W.1 and marking Exs.P-1 to P-16 and Ex.D-1 to D-3, by judgment dated 26.4.1999, convicted the respondent-accused for the offence under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.13,87,000/-, in default, to undergo simple imprisonment for one month and out of the fine amount, the trial Court directed the complainant to pay Rs.13,86,000/- as compensation.

5. Against the said judgment of the trial Court, the respondent-accused preferred appeal in Crl.A.No.127 of 1999, and the first appellate Court allowed the appeal filed by the respondent-accused and set aside the conviction and sentence passed by the trial Court and acquitted the respondent-accused of the charge under Section 138 of the N.I. Act and also directed to refund the fine amount, if paid.

6. Against the said judgment of the first appellate Court, the appellant-complaint has filed the present appeal Crl.A.No.294 of 2000 before this Court, and this Court, by judgment dated 13.12.2002, allowed the appeal, by reducing the sentence of simple imprisonment to three months and also reduced the amount of compensation to Rs.6,60,000/-, and deleted the sentence of fine of Rs.1,000/-.

7. Against the said judgment dated 13.12.2002 passed by this Court, the parties preferred appeals before the Supreme Court and the Supreme Court, by judgment dated 29.3.2007 in Crl.A.Nos.597 to 599 of 2003 and 775 of 2003, remanded the case as indicated above and the appeal is now heard afresh.

8. On remand from the Supreme Court, now this Court has to decide as to whether the respondent-accused is guilty of the offence under Section 138 of the N.I. Act.

9. After hearing the arguments of both sides, the only dispute to be decided is as to whether on the date of issuance of the cheques

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in question, there is any subsisting liability on the part of the respondent-accused.

10. Learned counsel for the appellant-complainant would contend that the handing over of the cheques in question, has been admitted by the respondent-accused and hence, the presumption of facts, under Sections 118(a) and 139 of the N.I. Act and Sections 3 and 4 of the Indian Evidence Act, be drawn from the existence of certain facts and the presumption drawn in respect of one fact may be used for the purpose of drawing presumption under another fact. The first appellate Court has not considered this aspect in proper perspective.

11. Learned counsel for the appellant-complainant further contended that the respondent-accused borrowed Rs.6,60,000/- on 30.6.1994 and executed a promissory note Ex.C-1 and on 5.5.1997, the respondent-accused paid only Rs.10/- and made an endorsement on the back of Ex.C-1. Since he was not in a position to discharge the loan amount due on promissory note Ex.C-1, the respondent-accused earlier issued two cheques, one dated 30.9.1997 for Rs.6,60,000/- and the other dated 31.10.1997 for Rs.5,80,000/- by calculating interest upto 30.10.1997.

12. Learned counsel for the appellant-complainant, focussed his argument on the basis of Ex.P-3 letter addressed by the respondent-accused to the appellant-complainant, dated 27.9.1997, in his own handwriting in Telugu and the English translation copy of the same is Ex.P-4. The other letter Ex.P-5 (Telugu) and Ex.P-6 (English translation), dated 29.10.1997 also was in his own handwriting and along with Ex.P-5 letter, the respondent-accused sent cheque to the appellant-complainant, for Rs.49,600/- for interest.

13. Learned counsel for the appellant-complainant submitted that along with the two cheques in question which were marked as Exs.P-7 and P-8, the respondent-accused sent a letter Ex.P-9 to the appellant-complainant on 15.12.1997. Since the other two cheques earlier issued by the respondent-accused, which were presented for encashment, returned dishonoured and since even the present two cheques Exs.P-7 and P-8 also returned dishonoured, the appellant-complainant issued notice Ex.P-13, through his counsel and the reply was received from the respondent-accused through his counsel, under Ex.P-14 and the rejoinder/notice was issued by the appellant-complainant, through his counsel, under Ex.P-15.

14. Learned counsel for the appellant-complainant further contended that even though the trial Court has come to the correct conclusion, the first appellate Court has committed error in allowing the appeal. After the earlier order of the Supreme Court, D.Ws.2 and 3 were examined and Exs.D-4 to D-60 were marked on the side of the respondent-accused. Learned counsel for the appellant-complainant further submitted that Ex.P-13 notice issued on behalf of the

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appellant-complaint, to the respondent-accused, is valid under law. As per Exs.P-3 to 6 and Ex.P-9, issuance of cheques in question, was admitted. So, the loan received also had been proved and hence, on the date of issuance, the cheques Exs.P-7 and P-8, were given only for discharge of the loan obtained by the respondent-accused on 30.6.1994 under Ex.C-1 promissory note.

15. Learned counsel for the appellant-complainant relied upon the decisions of the Supreme Court reported in AIR 2000 SC 828 = 2000 (2) SCC 380 (Suman Sethi Vs. Ajay K.Churiwal) and 2001 AIR SCW 2352 (2) = 2001 (10) SCC 763 (United Credit Ltd., Calcutta Vs. Agro Sales India and others) and submitted that the first appellate Court has allowed the appeal on the ground that in the notice Ex.P-13, the appellant-complainant claimed further interest along with the cheque amounts and so, it is not notice coming under Section 138 of the N.I. Act and acquitted the respondent-accused. Hence, he relied upon the said decisions and argued that Ex.P-13 notice is valid under law and so, the cause of action for filing the private complaint has arisen on Ex.P-13 and that factum has been considered by the trial Court. Learned counsel for the appellant-complaint also relied upon the decision of the Supreme Court reported in AIR 1999 SC 3762 = 1999 (7) SCC 510 (K.Bhaskaran Vs. Sankaran Vaidhyan Balan) and a decision of this Court reported in 1999 (I) CTC 6 (Balaji Seafoods Exports (India) Ltd. Vs. Mac Industries Ltd.), in support of his contentions. He prayed for allowing the Criminal Appeal and setting aside the judgment of acquittal passed by the first appellate Court.

16. Learned counsel for the respondent-accused would submit that the respondent never borrowed any money. P.W.1 Krishna Reddy, the appellant-complainant, D.W.1 Narayana Gupta, D.W.2 Raghunatha Reddy and Manikumar, the respondent-accused, were close friends, that the cheques were misused and in the private complaint, the appellant-complainant has not mentioned the date and other details of promissory note and the same were also not mentioned in Ex.P-13 notice and Ex.P-15 rejoinder. Even though Ex.C-1 is of the year 1994, it was given only in the year 1997. Ex.P-9 which is the letter stated to have written by the accused to the complainant, is concocted and not true and genuine document. For non-production of income tax returns/documents, adverse inference ought to have been drawn against the appellant-complainant and the documents produced by the appellant-complainant before the Court will reflect that those documents are concocted for the purpose of the case. Learned counsel for the respondent-accused relied upon the decision of the Supreme Court reported in 2006 (3) CTC 730 (SC) = 2006 (6) SCC 39 (M.S.Narayana Menon @ Mani Vs. State of Kerala) and submitted that the respondent-accused is not called upon to prove the negative. He also relied upon the decisions of the Supreme Court reported in 2008 (4) SCC 54 (Krishna Janardhan Bhat Vs. Dattatraya G.Hedge) and 2003 (4) CTC 252 (SC) = 2003 (8) SCC 300 (K.R.Indira Vs. Dr.G.Adinarayana) and submitted that the notice of demand in Ex.P-13 is bad in law.

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Learned counsel for the respondent-accused prayed for dismissal of the Criminal Appeal.

17. The point to be decided is as to whether Ex.P-13 notice is valid under law and whether it gives any cause of action for preferring the complaint.

18. Exs.P-7 and P-8 cheques and the signatures in those cheques, are admitted by the respondent/accused. When those cheques were presented for encashment, they were returned by the Bank as per the letters of the Bank in Exs.P-10, 11 and 12 and then only, the appellant-complainant issued notice under Ex.P-13 on 6.4.1998 and complaint has been filed within time.

19. Learned counsel for the appellant-complainant relied upon the decision of the Supreme Court reported in AIR 2000 SC 828 = 2000 (2) SCC 380 (Suman Sethi Vs. Ajay K.Churiwal), in which, the Supreme Court held in paragraphs 8 and 10, as follows:

> "8. It is well settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where, in addition to "said amount" there is also a claim by way of interest, cost, etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving up break-up of the claim the cheque amount, interest, damages, etc. are separately specified, other such claims for interest, cost, etc. would be superfluous and these additional claims would be severable and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonoured cheque, notice might well fail to meet the legal requirement and may be regarded as bad."

> "10. In Section 138 Legislature clearly stated that for the dishonoured cheque the drawer shall be liable for conviction if the demand is not made within 15 days of the receipt of notice but this is without prejudice to any other provision of the Act. If the cheque amount is paid within the above period or before the complaint is filed the legal liability under Section 138 will cease and for recovery of other demands as compensation, costs, interest, etc., a civil proceeding will lie. Therefore, if in a notice any other sum is indicated in addition to the "said amount" the notice cannot be faulted, as stated above."

20. While perusing Ex.P-13, it is stated in paragraph 3 therein that the first cheque issued for Rs.6,60,000/- represented the

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principal amount and the second cheque issued for Rs.7,25,920/- represented the interest. In paragraph 6 in Ex.P-13, the complainant claimed that, "The above two Cheques were in substitution of the two Cheques dt.30.9.1997 (Nos.746780 & 746779) for Rs.6,60,000/- and for Rs.5,80,000/- respectively, which you could not honour.", whereas in paragraph 11, the appellant-complainant claimed the entire payment at Rs.13,85,920/- by stating that, " .... ... my client hereby gives you fifteen days from now, under Sec.138 of the Negotiable Instruments Act, to effect the entire payment of Rs.13,85,920/- (Rs. Thirteen lakh eighty-five thousand nine hundred and twenty), together with further interest upto the date of actual payment by Banker's Cheque or Demand Draft.". In such circumstances, the total amount varies from the present two cheques issued and the earlier two cheques issued and in support of this contention, learned counsel for the respondent-accused would rely upon the decision of the Supreme Court reported in 2003 (4) CTC 252 (SC) = 2003 (8) SCC 300 (K.R.Indira Vs. Dr.G.Adinarayana), in which, the Supreme Court relied on the decision reported in AIR 2000 SC 828 = 2000 (2) SCC 380 (cited supra) and observed as follows:

> "11. Strong reliance was placed by the learned counsel for the appellants on Suman Sethi case (Suman Sethi Vs. Ajay K.Churiwal and another) (2000 (2) SCC 380) to contend that if the indication in the notice of other amounts than that covered by the cheque issued, does not as held by this Court invalidate the notice, there is no reason as to why a consolidated notice for two complainants cannot be issued. The extreme plea as is sought to be raised in this case based upon Suman Sethi's case (Suman Sethi Vs. Ajay K.Churiwal and another) (2000 (2) SCC 380) is clearly untenable. Though no formal notice is prescribed in the provision, the statutory provision indicates in unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. In Suman Sethi's case (Suman Sethi Vs. Ajay K.Churiwal and another) (2000 (2) SCC 380) on considering the contents of the notice, it was observed that there was specific demand in respect of the amount covered by the cheque and the fact that certain additional demands incidental to it, in the form of expenses incurred for clearance and notice charges were also made, did not vitiate the notice. In a given case if the consolidated notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand were also found to have been made may not invalidate the same. This position could not be disputed by the learned counsel for the respondent. However, according to the respondent, the notice in question is not

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separable in that way and that there was no specific demand made for payment of the amount covered by the cheque. We have perused the contents of the notice. Significantly, not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts but only the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount, nor could it be said that it was a demand for payment of the cheque amount and in addition thereto made further demands as well. What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuously absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the incriminating circumstance which exposes the drawer for being proceeded against under Section 138 of the Act. That being the position, the ultimate conclusion arrived at by the trial court and the High Court does not call for interference in these appeals, though for different reasons indicated by us. The appeals are, accordingly dismissed."

21. Learned counsel for the appellant-complainant also relied upon the decision of the Supreme Court reported in 2001 AIR SCW 2352 (2) = 2001 (10) SCC 763 (United Credit Ltd., Calcutta Vs. Agro Sales India and others), in which, while referring to the decision reported in AIR 2000 SC 828 = 2000 (2) SCC 380 (Suman Sethi Vs. Ajay K.Churiwal), the Supreme Court observed as follows:

"Leave granted.

2. The complainant is the appellant before us. A complaint having been filed under Section 138 of the Negotiable Instruments Act, the Magistrate dismissed the complaint holding the notice itself to be invalid as the notice contained not only the amount covered by the cheque but also some other amount towards interest and costs. The complainant moved the High Court by filing a revision petition and the High Court having dismissed the same, the complainant is before us.

3. The question of our consideration, therefore, is whether the impugned notice can be held to be invalid merely because the notice contained some amount towards interest and cost separately after indicating the amount covered by the cheque which stood bounced. This question has already been answered by this Court in the case of Suman Sethi v. Ajay Churiwal (2000 (1) SCALE 385 : 2000 AIR SCW 383).

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4. Mr.Ganguli, learned senior counsel appearing for the accused contended that the aforesaid judgment requires reconsideration in view of the strict compliance of the provisions of Section 138 of the Negotiable Instruments Act.

5. Having examined the notice that was given in the present case and the provisions of the Act as well as the law laid down by this Court, we see no force in the aforesaid contention and, therefore, in our view the Magistrate was wholly in error to hold that the notice itself is invalid. We, therefore, set aside the impugned order of the High Court and that of the Magistrate and direct the Magistrate to conclude the proceedings in accordance with law, as expeditiously as possible.

6. This appeal stands allowed accordingly."

22. From the above decisions, it is clear that the decision of the Supreme Court reported in AIR 2000 SC 828 = 2000 (2) SCC 380 (Suman Sethi Vs. Ajay K.Churiwal), was relied upon by the Supreme Court in both the later judgments reported in 2001 AIR SCW 2352(2) = 2001 (10) SCC 763 (United Credit Ltd., Calcutta Vs. Agro Sales India and others) and also in 2003 (4) CTC 252 = 2003 (8) SCC 300 (K.R.Indira Vs. Dr.G.Adinarayana).

23. As extracted above the observations of the Supreme Court, in the decision reported in 2003 (4) CTC 252 = 2003 (8) SCC 300 (cited supra), the Supreme Court held that, " .. .. Though no formal notice is prescribed in the provision, the statutory provision indicates in unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. .... ..... In a given case, if consolidated notice is found to provide sufficient information envisaged by the statutory provision and there was a specific demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/or that further demands in addition to the statutorily envisaged demand was also found to have been made may not invalidate the same. ...." It was further held in the said decision by the Supreme Court, that, " ... .... Significantly, not only the cheque amounts were different from the alleged loan amounts but the demand was made not of the cheque amounts but only the loan amount as though it is a demand for the loan amount and not the demand for payment of the cheque amount; nor could it be said that it was a demand for payment of the cheque amount and in addition thereto made further demands as well. What is necessary is making of a demand for the amount covered by the bounced cheque which is conspicuously absent in the notice issued in this case. The notice in question is imperfect in this case not because it had any further or additional claims as well but it did not specifically contain any demand for the payment of the cheque amount, the non-compliance with such a demand only being the

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incriminating circumstance which expose the drawer for being proceeded against under Section 138 of the Act. ...."

24. While considering the above decisions of the Supreme Court, along with Ex.P-13 notice, in the earlier paragraphs of Ex.P-13, the dates and the amounts of the cheques, have been given and in the subsequent paragraph, time has been specified and there is a specific wording for claim of amount and the prosecution for non-compliance, has been clearly mentioned. In paragraph 13 of Ex.P-13 notice, it is stated as follows:

> "13. Take Notice therefore, that unless you discharge the entire debt of Rs.13,85,920/- (Rs. Thirteen lakh eighty-five thousand nine hundred and twenty) by sending a Banker's Cheque or Demand Draft to my client, together with further interest till the date of actual payment, within FIFTEEN DAYS from now. Prosecution will be straightaway launched against you, both under Sec.138 of Negotiable Instruments Act and Sec.420 of Indian Penal Code."

25. Hence, I am of the view that while considering the contents of Ex.P-13, that notice is valid under Section 138 of the N.I. Act.

26. Next question to be decided is as to whether at the time of issuance of Exs.P-7 and P-8, there is any existing or subsisting legal liability.

27. Learned counsel for the appellant-complainant would submit that the documents Exs.P-3 to 6 and P-9 have clearly proved that Exs.P-7 ad P-8 were given only for discharge of the loan obtained by the respondent-accused under Ex.C-1 promissory note. Ex.P-3 is the Telegu version, dated 27.9.1997, which was written and signed by the respondent-accused in his own handwriting, in favour of the appellant-complainant, and the English translation of Ex.P-3, is marked as Ex.P-4. Ex.P-4 it is stated by the respondent-accused, as follows:

> "I gave you two Cheques towards your loan.
>
> (1) 30.9.97 Cheque No.746780 for Rs.6,60,000/-.
>
> (2) 31.10.97 Cheque No.746779 for Rs.5,80,000/-.
>
> Money has not reached me as expected. The moneys that I must get will reach on 10.11.97. Therefore, kindly present the above two Cheques in Bank on 11.11.97."

28. Next letter is Ex.P-5 (Telugu version), dated 29.10.1997, written by the respondent-accused to the appellant-complainant and

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the English translation of the same is marked as Ex.P-6, in which it is stated as follows:

> "I spoke with you in detail over the phone on 25.10.97. Afterwards, since the present money market has deteriorated, and because of Deepavali festival, the money that I must get may be delayed by two or three weeks, and I may not get on 10.11.97 as I had originally expected. Therefore, as I told you already, I am sending you interest of Rs.49,600/- upto 31.12.97 (from 1.11.97 to 31.12.97), calculating at 24%, by Cheque No.746783 dt.31.12.97 on Syndicate Bank.
>
> Therefore, the three Cheques listed below which I had given you, be presented in Bank on 31.12.97:-
>
> (1) Syndicate Bank, Cheque 746780 for Rs.6,60,000/- dt.30.9.97,
>
> (2) Syndicate Bank, Cheque No.746779 for Rs.5,80,000/- dt.31.10.97,
>
> (3) Syndicate Bank, Cheque No.746783 for Rs.49,600/- dt.31.12.97.
>
> Kindly do not deposit in Bank before that date.
>
> Whatever may happen, I will take back the above-mentioned three Cheques after paying the entire amount to you in the meantime by Pay Order.
>
> I desiringly expect you to wholeheartedly co-operate with me, understanding the present circumstances.
>
> Yours,
>
> Sd.
> Mani Kumar
>
> Enclosed:
>
> Syndicate Bank Cheque
> No.746783 for Rs.49,600/-
> dt.31.12.97."

29. The issuance of the cheques has been accepted by the respondent-accused. Furthermore, the letters Ex.P-3 (Telugu) and Ex.P-5 (Telugu) have also been accepted by the respondent-accused. Learned counsel for the respondent-accused submits that those documents have been written by the respondent-accused only on the instructions of the complainant's counsel Mr.Raghunatha Reddy, who was also the counsel for the respondent-accused during the relevant

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period of time. Since the appellant-complainant was facing the problem in Income Tax Department, to help the complainant and to facilitate the complainant to escape from the clutches of the Income Tax Department, those cheques were issued and the letter has been given only on the instructions of the counsel Mr.Raghunatha Reddy. At this juncture, it is appropriate to consider the argument advanced by learned counsel for the respondent-accused that the document has been issued to help the appellant-complainant by facilitating him to escape from the clutches of the Income Tax Department. Except the ipse-dixit of D.W.3, i.e. the respondent-accused, no other evidence is available. It is pertinent to note that Raghunatha Reddy was examined as D.W.2. When he was in the witness box, in his evidence, no suggestion was posed to him in respect of Exs.P-3 and P-5 and P-9 that those letters have been given by the respondent-accused, only on his instructions and advise. But a suggestion was posed to him that he filed the case against the Income Tax Official on behalf of Krishna Reddy, the appellant-complainant. A suggestion was also posed to D.W.2 that he approached the accused and asked for signing in the blank promissory note and other blank papers to save Mr.Krishna Reddy, the complainant from the Income Tax Department problem, and the said suggestion was denied by D.W.2. While perusing Exs.P-3 and 5, it is seen that they were written by the respondent-accused in his own handwriting in Telugu to the appellant-complainant. D.W.2 Raghunatha Reddy denied the suggestion in his evidence that he obtained signed blank promissory note, cheques and other signed blank papers to save the complainant from Income Tax problem.

30. In such circumstances, it is painful to accept that Exs.P-3, 5 and 9 are given on the instructions of Raghunatha Reddy to facilitate the appellant-complainant to escape from the clutches of the Income Tax Department.

31. Learned counsel for the respondent-accused would submit that Ex.P-9 is only a typed matter and it was not in the respondent's (accused) own handwriting and after obtaining the signature from the respondent-accused, Ex.P-9 has been concocted for the purpose of the case. While perusing Ex.P-9, it is to be noted that it is dated 15.12.1997 and the signature and the date of the respondent-accused were there. Furthermore, in Ex.P-9, the two cheque numbers and the amount of Rs.7,25,920/-, have been written by the respondent-accused and he also attested for the said writings on the same. No explanation has been offered by D.W.3, the respondent-accused. In the above circumstances, it is painful to accept the argument advanced by the learned counsel for the respondent-accused that Ex.P-9 was concocted in the blank paper, in which Raghunatha Reddy obtained signature of the respondent-accused. So, the argument advanced by learned counsel for the respondent that Exs.P-3, 5 and 9 are concocted for the purpose of the case, does not merit acceptance.

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32. Learned counsel for the respondent-accused would mainly focus upon the document Exs.D-1 to D-60 filed on the side of the respondent-accused. They are discussed hereunder:

Exs.D-1 and D-2 are the promissory notes. Learned counsel for the respondent-accused would submit that both the appellant and the respondent have obtained loan from one Narayana Gupta, who was examined as D.W.1, before the Court and they are joint borrowers. To prove the same, he has filed Exs.D-1 and D-2, both dated 8.12.1993. Even though P.W.1 has stated that he is one of the persons, who attested the same, he is not the joint borrower, but while perusing Exs.D-1 and D-2 promissory notes in favour of Sathyajyothi Investments and Divyajyothi Financiers respectively, it shows that both the appellant and the respondent herein are joint borrowers and both of them have signed on the stamps, that their names have been incorporated in the printed promissory notes and both the loan amounts have been discharged by issuance of cheques, dated 16.9.1995 in respect of Rs.3,00,000/- and Rs.3,50,000/- respectively. Ex.D-3 is also dated 8.12.1993 and it is for Rs.3,50,000/-. This is also joint borrowing from one Anandajyothi Investments, which was also discharged on issuance of cheque on 16.9.1995. Thus, it is clear that Exs.D-1 to D-3 are dated 8.12.1993, for Rs.3,00,000/-, Rs.3,50,000/- and Rs.3,50,000/- respectively, which have been jointly borrowed by both the appellant and the respondent from Sathyajyothi Investments, Divyajyothi Financiers and Anandajyothi Investments, respectively, and the loan amounts have been discharged by way of issuance of respective cheques, dated 16.9.1995 and that the endorsements could be found on the back of the respective Exs.D-1 to D-3. Before remand, those documents Exs.D-1 to D-3 were marked. So, it is clearly proved that the appellant and the respondent were friends before issuance of the present cheques and they were having joint borrowings with financial institutions. It is pertinent to note that to prove Exs.D-1 to D-3, D.W.1 Narayana Gupta, who was one of the partners of the firm Sathyajyothi Investments, has been examined.

After the earlier remand order of the Supreme Court, the respondent-accused filed the documents Exs.D-4 to D-60 and all those documents have been marked through D.W.3, the respondent-accused.

The documents Exs.D-4 to D-7 show that either the respondent or his family members have borrowed money from Amruthajyothi Finance Corporation, Jyothi Financiers and Viswajyothi Financier and Jyothi Financiers respectively, for Rs.1 lakh, Rs.20 lakhs, Rs.10 lakhs and Rs.5 lakhs respectively. Those amounts also have been discharged subsequently. Those documents are not relevant for the purpose of the case to decide as to whether on the date of issuance of Exs.P-7 and P-8 cheques, the respondent-accused was having any subsisting or existing liability to repay by way of issuance of cheque. Those documents Exs.D-4 to D-7 have proved that the respondent's (accused)

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family members and himself, borrowed money and were indebted then and there.

Ex.D-8 dated 24.6.1994, has been written by D.W.2 Raghunatha Reddy, giving the details of the documents furnished to Jyothi Financiers, when the wife of the respondent-accused obtained loan from Jyothi Financiers.

Exs.D-9 to 13, are written by D.W.2 Ragunatha Reddy, which show that Raghunatha Reddy was acting for and on behalf of the respondent-accused, in the year 1994.

Ex.D-14 is a letter alleged to have been given by Kalyana Chakravarthy, the son of the respondent-accused in favour of Ananda Jyothi Investments, for depositing the original sale deeds witnessed by Raghunatha Reddy and the respondent herein.

Likewise, the document Ex.D-15 dated 1.8.1996, is also a letter alleged to have been given by the respondent's son, Kalyana Chakravarthy in favour of one Mahendra Enterprises, for depositing the original sale deeds and the witnesses were the respondent and Ragunatha Reddy.

The son of the respondent-accused borrowed Rs.12 lakhs under Ex.D-16 promissory note from Anandajyothi Investments on 15.7.1996, in which D.W.2 Raghunatha Reddy was the attestor/witness and the respondent was a co-signatory and the loan was discharged and the amounts have been paid through various Banker's Cheques, dated 25.8.2004 and 26.8.2004.

Likewise, as per Ex.D-17 promissory note, the respondent's son Kalyana Chakravarthy borrowed Rs.20 lakhs from Anandajyothi Investments on 12.7.1996, witnessed/attested by Raghunatha Reddy and the respondent was a co-signatory and the loan was discharged and the amounts have been paid through various Banker's Cheques, dated 25.8.2004 and 26.8.2004.

Ex.D-18 promissory note, dated 14.10.1996 shows that Kalyana Chakravarthy; his father, the respondent-accused and the Advocate Raghunatha Reddy, borrowed Rs.10 lakhs from Anandajyothi Investments, discharged on 25/26.8.2004 by Banker's Cheques.

As per Ex.D-19 promissory note, the respondent and his son, borrowed Rs.10 lakhs from Mahendra Enterprise on 11.10.1996 and in that, D.W.2, the respondent's Advocate Raghunatha Reddy signed on the stamps, but his name does not find place in the recitals of promissory note. The loan was discharged on 25/26.8.2004 by way of issuance of Banker's Cheques.

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Ex.D-20 promissory note is dated 2.8.1996, in which the respondent and his son along with Raghunatha Reddy, borrowed Rs.10 lakhs, from Mahendra Enterprise, which was discharged on 25/26.8.2004.

Ex.D-21 relates to particulars of loan availed by the respondent's son Kalyana Chakravarthy and Raghunatha Reddy and as on 31.3.1997, the balance was Rs.20 lakhs.

Ex.D-22 is dated 1.8.1996 and it was written by Raghunatha Reddy with regard to the documents furnished when the loan was obtained by the son of the accused.

Ex.D-23 is dated 8.12.1993, being the letter from the accused to Anandajyothi Investments, to show that the respondent herein borrowed money from Anandajyothi Investments and at that time, he deposited the original document and that was witnessed by Raghunatha Reddy.

Ex.D-24 is also dated 8.12.1993, being the letter from the accused to Divyajyothi Financiers, when he deposited the sale deeds and that letter has been witnessed by Raghunatha Reddy.

Ex.D-25 is also dated 8.12.1993, given by the respondent-accused to Sathyajyothi Investments, for depositing the sale deeds for availing of the loan and that letter has been witnessed by Raghunatha Reddy.

All these documents have been filed to show that Raghunatha Reddy, who was the counsel appearing for the appellant-complainant when the complaint was filed before the trial Court, was also the counsel for the respondent-accused for a long time and he has been taking part in all the financial transactions of the respondent-accused.

The respondent-accused also marked document Ex.D-26 series of cheques, issued by the respondent-accused, in favour of Divyajyothi Financiers, Anandajyothi Investments and Sathyajyothi Investments, for discharge of loan obtained under Exs.D-1 to D-3.

The receipts given by the said three financial institutions to the respondent-accused, are marked as Ex.D-27 series.

Ex.D-28 is the transactions in writings by Raghunatha Reddy and on the top, it was mentioned as "A.Krishna Reddy" (the appellant-complainant).

Ex.D-29 letter has been issued to the appellant-complainant-Krishna Reddy, Chairman, Standing Committee (for Accounts and Audit), Chennai City Municipal Corporation, Chennai-3, by the respondent-accused. The private complaint in the present case, which was

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presented by the complainant to the Court in C.C.No.3316 of 1998, is dated 4.5.1998 and Ex.D-29 is dated 13.12.2004, i.e. when the matter was before the Supreme Court.

Ex.D-30 is a Telegram to the appellant/complainant issued by the respondent/accused and it is the replica of Ex.D-29.

Ex.D-31 is another letter written by the respondent-accused on 21.11.2004 to the appellant-complainant and sought for some particulars whether the appellant-complainant received from Raghunatha Reddy, Rs.1,09,750/- on 15.5.1994 and Rs.1,25,000/- on 21.5.1994, totalling to Rs.2,34,750/-.

Ex.D-32 is the telegram to P.W.1, the appellant-complainant and D.W.1 Narayana Gupta, requesting as to whether P.W.1, the complainant and D.W.1, had sent the intimation to the Presidency Club and Cosmopolitan Club, with regard to the conviction of the respondent-accused in the criminal case.

Ex.D-33 is the postal return cover with endorsement, "party out of station and further address not known". Exs.D-34 to 37 are also the postal return covers.

Ex.D-38 is the copy of the plaint presented by the appellant herein in suit in C.S.No.804 of 1992 on the file of this Court, against one H.V.Krishnamurthy, who was serving as Assistant Commissioner of Income Tax, and the suit was filed claiming Rs.2,20,000/- as damages.

The appellant-complainant also obtained a decree in E.P.No.116 of 1992 in C.S.No.804 of 1992 and D.W.2 Raghunatha Reddy, the then counsel for the appellant-claimant, has given a requisition in Ex.D-39 to the Assistant Registrar (O.S), of this Court, for issuance of warrant of attachment of defendant's movables, as per the order dated 27.11.1992 in the said E.P. The said requisition/Ex.D-39 is dated 30.11.1992.

The defendant in the said suit in C.S.No.804 of 1992, namely Krishnamurthy, Assistant Commissioner of Income Tax of City Circle-III, Madras-6, has filed O.S.A.No.290 of 1992 before this Court against the appellant-complainant-Krishna Reddy and the Judge's summons therein was marked as Ex.D-40 and the copy of the judgment/decree in O.S.A.No.290 of 1992 were marked as Ex.D-41.

Ex.D-42 is the notes of calculation for payments made in respect of the promissory note, for the principal amount of Rs.6,60,000/-.

Ex.D-43 is the Advocate's notice dated 31.7.1999 issued by the Advocate R.S.Ranganadham, who has issued the said notice on behalf of the respondent-accused to Raghunatha Reddy, Advocate (D.W.2).

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Ex.D-44 is the certified copy of Form A of Register of Firms of Jyothi Financiers, which shows that Narayana Gupta D.W.1 was one of the partners in the firm and the appellant-Krishna Reddy, the complainant, was also one of the partners.

Ex.D-45 is the letter addressed by the Presidency Club to M/s.Aristo Paints Ltd., informing about the letter dated 26.12.2002 from the appellant, who enclosed a copy of the judgment in Crl.A.No.294 of 2000, whereby, the respondent-accused was convicted and in Ex.D-45, the Honorary Secretary of the Presidency Club requested for recalling the nomination of the accused, who was using the Club.

In Ex.D-45, there is also a show cause notice for initiation of disciplinary proceedings, issued by the Cosmopolitan Club to the respondent-accused regarding his conviction on 13.12.2002 by this Court.

The Bar Council of Tamil Nadu, through its Disciplinary Committee, has issued notice of hearing to D.W.2 Raghunatha Reddy and the copy of the same is marked as Ex.D-46.

The proceedings of the Disciplinary Committee of the Bar Council of India, is marked as Ex.D-47.

Affidavit of undertaking given by D.W.2 Raghunatha Reddy is Ex.D-48 and in that, he has undertaken to withdraw the vakalatnama and appearance in Crl.A.Nos.218 and 219 of 1999 pending on the file of the First Additional Sessions Court, Madras and in Crl.A.No.294 of 2000 pending before this Court. In pursuance of the same, order has been passed by the Supreme Court in the Special Leave Petitions in S.L.P.(Crl).Nos.712 and 713 of 2001, on 12.10.2001, and the S.L.Ps. were disposed of as infructuous, without entering into the merits of rival contentions.

Ex.D-49 is letter dated 11.11.2001, sent by the respondent-accused to D.W.2 Raghunatha Reddy.

Exs.D-50 to D-52, D-54, D-55 and D-58, are the copies of the cause lists of this Court of various dates, to show that Raghunatha Reddy was appearing against the respondent-accused.

Ex.D-53 is the telegram issued by the respondent-accused to D.W.2 Raghunatha Reddy, D.W.1 Narayana Gupta and the appellant-complainant-Krishna Reddy and the certified true copy of the same is dated 18.3.2003.

Ex.D-56 is another letter written by the respondent-accused to one Nanda Kumar, Advocate's Clerk.

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Ex.D-57 is the affidavit/petition of the respondent-accused, filed before IX Assistant Judge, City Civil Court, Madras, in E.A.No....of 2003 in E.P.No.1951 of 2001 in O.S.No.154 of 1999 on the file of the Additional Senior Civil Judge, Tirupati, for reopening the case filed against Raghunatha Reddy.

Ex.D-59 is the Advocate's notice dated 10.11.1997, issued by Raghunatha Reddy (D.W.2) on behalf of Mahendra Enterprises, to Kalyana Chakravarthy, son of the respondent-accused, with a copy marked to the respondent-accused, stating that the cheques issued by Kalyana Chakravarthy in favour of Mahendra Enterprises, were dishonoured by the Bank.

Ex.D-60 is another Advocate's notice issued by Raghunatha Reddy on behalf of Anandajyothi Investments, dated 10.11.1997, to Kalayana Chakravarthy, son of the respondent-accused, with a copy marked to the respondent-accused, stating that the cheques issued in favour of Anandajyothi Investments, were dishonoured by the Bank.

33. Even though the respondent-accused has filed the above said 60 documents, of which Ex.D-44 proved that the appellant-complainant was a partner in Jyothi Financiers, along with D.W.1 Narayana Gupta. Exs.D-1 to D-3 show that the appellant-complainant is the joint borrower along with the respondent-accused from the respective financial institutions. Even though the appellant-complainant denied that he was not co-borrower, but while perusing those documents/Promissory Notes, it is seen that the appellant-complainant also signed on the stamps of the promissory notes, and so, he was the co-borrower. The other documents have proved that the respondent-accused and his family members borrowed money from various financial institutions and repaid the same and D.W.2 Raghunatha Reddy alone arranged for the same to them and on his instructions only, they deposited the title deeds and some of the documents were written by Raghunatha Reddy. It is also seen from those documents that Raghunatha Reddy also borrowed some amount along with the respondent-accused herein and his son Kalyana Chakravarthy. The respondent-accused also filed some documents to show that the said Raghunatha Reddy is acting against his interest and he appeared against the respondent-accused and suit proceedings and the cause lists of this Court have also been marked.

34. The above 60 documents are irrelevant to decide as to whether, on the date of issuance of the cheques Exs.P-7 and P-8, there existed any existing/subsisting legal liability.

35. At this juncture, learned counsel for the respondent-accused culled out portion of the evidence of D.W.3 (respondent-accused) and argued that all the loan arrangements have been made only through D.W.2 Raghunatha Reddy, who also wrote documents Exs.D-8 to 15. In September, 1995, first week, D.W.2 accused, obtained loan for Rs.2

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crores, from Indian Overseas Bank, Triplicane Branch and as per the advise of Raghunatha Reddy, D.W.3 discharged the loan amount of Rs.35 lakhs and further he advised D.W.3 to discharge the loan amount of Rs.10 lakhs, which was jointly borrowed by D.W.3 (respondent-accused) and Krishna Reddy (appellant-complainant) and on 16.9.1995, D.W.2 Raghunatha Reddy promised D.W.3 that he would get Rs.10 lakhs from Krishna Reddy.

36. It is pertinent to note that the respondent-accused has not filed any document to show that he has borrowed Rs.2 crores from Indian Overseas Bank in the year 1995, whereas the documents filed by him under Exs.D-16 to D-21 would show that he discharged the amounts only on 25.8.2004 and 26.8.2004. Furthermore, Exs.D-1 to D-3 promissory notes, are dated 8.12.1993 and those promissory notes have been discharged on 16.9.1995 through I.O.B./Bank of India Cheques for Rs.3 lakhs, Rs.3,50,000/- and Rs.3,50,000/- respectively. The total sum borrowed is Rs.10 lakhs.

37. It is pertinent to note that as per Ex.D-44 Form A of the Register of Firms, the name of the firm is Jyothi Financiers and the appellant-complainant and D.W.1 Narayana Gupta, were partners of Jothi Financiers and as per Ex.D-44, the said Jyothi Financiers had been registered on 4.2.1980 in Serial Number of the Firm: 114 of 1980.

38. At this juncture, it is appropriate to consider the evidence of D.W.1 Narayana Gupta, who in his chief examination, has stated that he made endorsement/signature on the back of Ex.D-1 and he also signed on Exs.D-2 and D-3, and so, it is painful to accept that the appellant-complainant has borrowed money along with the respondent-accused and that amount is borrowed only for the benefit of the appellant-complainant, is unacceptable.

39. When P.W.1, the appellant-complainant, was in the witness box, the relevant documents Exs.P-3 and P-5, the translation copies of the same being Exs.P-4 and P-6 respectively and also Ex.P-9, were marked. In cross examination, a bald suggestion was posed to him that as per the direction of the counsel, P.W.1, the complainant and the respondent-accused have written, which was denied by him. The further suggestion that they were under the compulsion to write a letter to the accused, was also denied. P.W.1 further stated in his cross examination that in Ex.P-9 letter, the respondent-accused Manikumar signed and the further suggestion that Ex.P-9 letter had been prepared by his counsel, has been denied by P.W.1. P.W.1 has stated in his cross examination as follows:

> " .... ஆஜர் எதிரி நானும் என் வக்கீலும் சொல்லியபடி எழுதினார் என்றால் சரியல்ல. எதிரிக்கு நாங்கள் கூறியபடி கடிதம் எழுதி தர வேண்டிய அவசியம் ஏற்பட்டது என்றால் சரியல்ல. வா.சா.ஆ.9 இந்த கடிதம் மணிக்குமார் கையெழுத்து போட்டு தந்தார். இந்த கடிதம் என் வக்கீல் தயார் செய்தார் என்றால் சரியல்ல ....."

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40. So, there is no specific cross examination of P.W.1 in respect of Exs.P-3 to P-5. Subsequently, he was recalled on 16.8.2007 and examined on the direction of the Supreme Court and at that time also, in respect of Exs.P-3 and P-5, no suggestion was posed to him and at that time, during cross examination, he has stated that Ex.P-9 has been directly given by the accused himself and P.W.1 denied the suggestion that Ex.P-9 has been given by his counsel Raghunatha Reddy and then he filled up the same. He stated in his cross examination as follows:

> " ..... வாதி சா.ஆ.9 கடிதம் எதிரி அனுப்பியது. அது யாரால் தயாரிக்கப்பட்டது என்று எனக்கு தெரியாது. எதிரிதான் நேரடியாக அந்த கடிதத்தை கொடுத்தார். வாதி சா.ஆ.9 கடித ஆவணம் ரகுநாதன ரெட்டி என்பவர் என்னிடம் கொடுத்த வெற்று காகித ஆவணத்தில் நானாக எழுதிக் கொண்டது என்று சொன்னால் சரியல்ல. அதனால்தான் அந்த கடிதத்தில் டைப்பிங் சிங்கிள் லைன் ஆகவும் டபுள் லைன் ஸ்பேசாகவும் காணப்படுகிறது என்று சொன்னால் சரியல்ல. ...."

41. So, considering the evidence of P.W.1 (appellant-complainant), it is clearly proved, as observed earlier, that in Ex.P-9, the respondent-accused has filled up the cheque Nos. and the amount, and he attested and signed for the same in Ex.P-9 letter. In such circumstances, the argument advanced by the learned counsel for the respondent-accused that Ex.P-9 has been concocted in the signed blank paper by the appellant-complainant, does not merit acceptance.

42. Learned counsel for the respondent-accused relied upon the decision of the Supreme Court reported in 2006 (3) CTC 730 = 2006 (6) SCC 39 (M.S.Narayana Menon @ Mani Vs. State of Kerala), wherein, the Supreme Court held as follows:

> "30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.
>
> 31. A Division Bench of this Court in Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, 1999 (1) CTC 497 : 1999 (3) SCC 35, albeit in a civil case laid down the law in the following terms: (SCC pp.50-51, para 12)

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"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The Court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt."

This Court, therefore, clearly opined that it is not necessary for the defendant to disprove the existence of consideration by way of direct evidence.

32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.

33. Presumption drawn under a statute has only an evidentiary value. Presumptions are raised in terms of the Evidence Act. Presumption drawn in respect of one fact may be an evidence even for the purpose of drawing presumption under another.

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36. It was for the appellant only to discharge the initial onus of proof. He was not necessarily required to disprove the prosecution case. Whether in the given facts and circumstances of a case, the initial burden has been discharged by an accused would be a question of fact. It was a matter relating to appreciation of evidence. The High Court in its impugned judgment did not point out any error on the part of the appellate court in that behalf.

37. What would be the effect of a presumption and the nature thereof fell for consideration before a Full Bench of the Andhra Pradesh High Court in G.Vasu v. Syed Yaseen Sifuddin Quadri, AIR 1987 A.P. 139. In an instructive judgment, Rao, J. (as His Lordship then was) speaking for the Full Bench noticed various provisions of the Evidence Act as also a large number of case-laws and authorities in opining: (AIR p.147, para 30)

> "30. From the aforesaid authorities, we hold that once the defendant adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there is no consideration in the manner pleaded in the plaint or suit notice or the plaintiff's evidence, the burden shifts to the plaintiff and the presumption 'disappears' and does not haunt the defendant any longer."

It was further held: (AIR pp.148-49, para 32)

> "32. For the aforesaid reasons, we are of the view that where, in a suit on a promissory note, the case of the defendant as to the circumstances under which the promissory note was executed is not accepted, it is open to the defendant to prove that the case set up by the plaintiff on the basis of the recitals in the promissory note, or the case set up in suit notice or in the plaint is not true and rebut the presumption under Section 118 by showing a preponderance of probabilities in his favour and against the plaintiff. He need not lead evidence on all conceivable modes of consideration for establishing that the promissory note is not supported by any consideration whatsoever. The words 'until the contrary is proved' in Section 118 do not mean that the defendant must necessarily show that the document is not supported by any form of consideration but the defendant has the option to ask the court to consider the non-existence of consideration so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that consideration did not exist. Though

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the evidential burden is initially placed on the defendant by virtue of Section 118 it can be rebutted by the defendant by showing a preponderance of probabilities that such consideration as stated in the pronote, or in the suit notice or in the plaint does not exist and once the presumption is so rebutted, the said presumption 'disappears'. For the purpose of rebutting the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or on presumptions of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has also the legal burden. Thereafter, the presumption under Section 118 does not again come to the plaintiff's rescue. Once both parties have adduced evidence, the court has to consider the same and the burden of proof loses all its importance."

38. If for the purpose of a civil litigation, the defendant may not adduce any evidence to discharge the initial burden placed on him, a "fortiori" even an accused need not enter into the witness box and examine other witnesses in support of his defence. He, it will bear repetition to state, need not disprove the prosecution case in its entirety as has been held by the High Court.

39. A presumption is a legal or factual assumption drawn from the existence of certain facts.

.... ....

41. In Hiten P.Dalal v. Bratindranath Banerjee, 2001 (3) CTC 243 : 2001 (6) SCC 16, a three-Judge Bench of this Court held that although by reason of Sections 138 and 139 of the Act, the presumption of law as distinguished from presumption of fact is drawn, the Court has no other option but to draw the same in every case where the factual basis of raising the presumption is established. Pal, J. speaking for a three-Judge Bench, however, opined: (SCC pp.24-25,paras 22-23)

"22. .... Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the

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reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when,

> "after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists".

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man"."

42. The court, however, in the fact situation obtaining therein, was not required to go into the question as to whether an accused can discharge the onus placed on him even from the materials brought on record by the complainant himself. Evidently in law he is entitled to do so.

43. In Goaplast (P) Ltd. v. Chico Ursula D'Souza, 2003 (1) CTC 752 : 2003 (3) SCC 232, upon which reliance was placed by the learned counsel, this Court held that the presumption arising under Section 139 of the Act can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. The question which arose for consideration therein was as to whether closure of accounts or stoppage of payment is sufficient defence to escape from the penal liability under Section 138 of the Act. The answer to the question was rendered in the negative. Such a question does not arise in the instant case.

44. In Kundan Lal Rallaram v. Custodian, Evacuee Property, Bombay, AIR 1961 SC 1316, Subba Rao, J., as the learned Chief Justice then was, held that while considering the question as to whether burden of proof in terms of Section 118 had been discharged or not, relevant evidence

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cannot be permitted to be withheld. If a relevant evidence is withheld, the court may draw a presumption to the effect that if the same was produced, it might have gone unfavourable to the plaintiff. Such a presumption was itself held to be sufficient to rebut the presumption arising under Section 118 of the Act stating: (AIR p.1319, para 5)

> "Briefly stated, the burden of proof may be shifted by presumptions of law or fact, and presumptions of law or presumptions of fact may be rebutted not only by direct or circumstantial evidence but also by presumptions of law or fact. We are not concerned here with irrebuttable presumptions of law."
>
> ....
>
> ....
>
> 45. ...

Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with a defendant in a civil proceeding.

....

...

51. The submission of the second respondent that the appellant had not denied his entire responsibility and the dispute relating only to the quantum of debt cannot be accepted.

52. We, in the facts and circumstances of this case, need not go into the question as to whether even if the prosecution fails to prove that a large portion of the amount claimed to be a part of the debt was not owing and due to the complainant by the accused and only because he has issued a cheque for a higher amount, he would be convicted if it is held that existence of debt in respect of large part of the said amount has not been proved. The appellant clearly said that nothing is due and the cheque was issued by way of security. The said defence has been accepted as probable. If the defence is acceptable as probable the cheque therefor cannot be held to have been issued in discharge of the debt as, for example, if a cheque is issued for security or for any other purpose the same would not come within the purview of Section 138 of the Act.

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53. We have gone through the oral evidence. The second respondent has even failed to prove that the appellant had paid to him a sum of Rs.5000 by cash.

54. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below.

..... "

43. Relying on the said decision, learned counsel for the respondent-accused argued that the appellant-complainant has not filed any document to show that he paid to the respondent-accused the loan amount of Rs.6,60,000/- under Ex.C-1 promissory note, and so, adverse inference be drawn. In Ex.C-1, the respondent-accused signed and written his name in block letters in brackets after his sign and he has given a wrong date and that has been corrected and attested by him. On 5.5.1997, the respondent-accused paid Rs.10/- and he signed on the back of Ex.C-1 promissory note. Ex.P-3 (in Telugu) is dated 27.9.1997 (English translation of the same is Ex.P-5) and the respondent-accused calculated the interest also and he has given a cheque for Rs.5,80,000/- along with another cheque for the principal amount of Rs.6,60,000/-. It is in his own handwriting and the date also has been mentioned by him. It shows the genuineness of the document Ex.P-3. Ex.P-5 (in Telugu) is dated 29.10.1997 (English translation of the same is Ex.P-6) and it is in his own handwriting and for the period from 1.11.1997 to 31.12.1997, he calculated 24% interest and issued cheque No.746783, dated 31.12.1997, for Rs.49,600/-. The said cheque for Rs.49,600/- was issued after one month. It also shows the Cheque No. as 746783, with date 31.12.1997, which shows the genuineness of the document Ex.P-5.

44. As already stated, both Exs.P-3 and P-5 are true and genuine. On 15.12.1997, as seen from Ex.P-9 letter issued by the accused to the complainant, the accused has taken back the two cheques already given in Nos.746780 and 746779 issued for Rs.6,60,000/- and Rs.5,80,000/- respectively, and gave the present post-dated cheques (Exs.P-7 and P-8), both dated 31.3.1998 for Rs.6,60,000/- and Rs.7,25,920/- by calculating interest upto 31.3.1998. Ex.P-9 is also genuine. This shows that the respondent herein (accused) has issued the cheques Exs.P-7 and P-8, for repaying the loan obtained on 30.6.1994 through Ex.C-1 promissory note. Ex.P-9 has been issued only by the respondent-accused and is found to be genuine, as discussed by this Court in the earlier paragraphs. He himself in his own handwriting, filled up the cheque Nos. and the interest amount and the accused attested the same. In such

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circumstances, I am of the view that on the date of issuance of the cheques Exs.P-7 and P-8, there is existing/subsisting legal liability. So, the argument advanced by learned counsel for the respondent-accused that on the date of issuance of Exs.P-7 and P-8, there is no subsisting liability and it was only given to facilitate the appellant-complainant to escape from the clutches of Income Tax Department, does not merit acceptance.

45. Furthermore, as per Section 118 of the N.I. Act, the "presumption" as to every negotiable instrument bearing the date, shall be made or drawn on such date and in a suit for dishonour, the Court shall, on proof of protest, presume the fact of dishonour, unless disproved under Section 119 of the N.I. Act. Under Section 139 of the N.I. Act, the presumption is in favour of the holder of the instrument, unless the contrary is proved and the presumption is that the holder of the cheque received the cheque, of the nature, for the discharge, in whole or part of any debt or other liability. When once the signature in the cheques in question are admitted by the respondent-accused, then the presumption under Sections 118 and 139 of the N.I. Act will follow. The drawing of the cheque from the Bank account in discharge of any debt or other liability, which proposed the legally enforceable debt, is not "presumption" under Section 139 of the N.I. Act. Irrespective of the fact as to whether the alleged transaction is stated in the complaint or not, if the complainant seeks to draw the "presumption" under Section 139 of the N.I. Act, he is bound to establish the basis for drawing the presumption. The fundamental basis for drawing such presumption is the Court's satisfaction that the person in whose favour the presumption is drawn, is the holder of the cheque. If such fact is not established, the Court shall not draw such presumption in favour of the complainant.

46. In the present case, as already discussed in the earlier paragraphs of this judgment, the appellant-complainant has proved that Ex.C-1 promissory note is true and genuine document and to discharge the loan obtained in Ex.C-1 promissory note, the respondent-accused earlier issued the two cheques as seen from Ex.P-3 and Ex.P-5 and he also gave another cheque for Rs.49,600/- as seen from Ex.P-5 and subsequently, under Ex.P-9, he has taken back all the earlier cheques issued and then issued the present cheques Exs.P-7 and P-8, which are in dispute. So, the appellant-complainant has proved that the cheques in question have been given for the subsisting and existing legal liability on the date of issuance of the cheques, i.e. issued on 15.12.1997, but post-dated 31.3.1998.

47. The phrase "shall presume" is defined in Section 4 of the Indian Evidence Act and it implies that the Court treats the fact as proved, unless and until it is disproved. So, Section 139 of the N.I. Act empowers the Court dealing with the complaint under Section 138 of the N.I. Act to presume the holder of the cheque, received the

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cheque of the nature, referred to Section 138 of the N.I. Act, for discharge. It is obligatory on the Court to raise the presumption in every case where the factual basis for the raising of the presumption has been established. It introduces an exception to the rule as to the burden of proof in criminal cases and shifts the onus to the accused. Such presumption is "presumption of law" as distinguished from the presumption of fact, which describes the provision by which the Court may presume certain state of affairs.

48. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the respondent reported in 2006 (3) C.T.C. 730 = 2006 (6) SCC 39 (M.S.Narayana Menon @ Mani Vs. State of Kerala), wherein, as quoted earlier in this judgment, the Supreme Court held as follows:

> "30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon."

49. Learned counsel for the respondent-accused would cull out some portion of the citation referred to above and submit that non-filing of the income tax returns is fatal and he further submits that the onus on the accused is not as heavy as that of the prosecution and it may be compared with the defence in the civil proceedings. The above citation is not applicable to the facts of the present case.

50. Learned counsel for the respondent-accused also relied upon the decision of the Supreme Court reported in 2008 (4) SCC 54 (Krishna Janardhan Bhat Vs. Dattatraya G.Hegde), in which it was held as follows:

> "41. Mr Bhat relied upon a decision of this Court in Hiten P. Dalal v. Bratindranath Banerjee (2001 (6) SCC 16 : 2001 SCC (Cri) 960) wherein this Court held: (SCC pp.24-25, paras,22-23)
>
> > "22. .... Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the

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prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when,

> 'after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists'.

Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'."

(See also K.N. Beena v. Muniyappan (2001 (8) SCC 458 : 2002 SCC (Cri) 14).

.....

.....

44. The presumption of innocence is a human right. (See Narendra Singh v. State of M.P. (2004 (10) SCC 699 : 2004 SCC (Cri) 1893), Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005 (5) SCC 294 : 2005 SCC (Cri) 1057) and Rajesh Ranjan Yadav v. CBI (2007 (1) SCC 70 : 2007 (1) SCC (Cri) 254). Article 6(2) of the European Convention on Human Rights provides: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." Although India is not bound by the aforementioned Convention and as such it may not be necessary like the countries forming European countries to bring common law into land with the Convention, a balancing of the accused's rights and the interest of the society is required to be taken into consideration. In India, however, subject to the statutory interdicts, the said principle forms the basis of criminal jurisprudence. For the aforementioned purpose the nature of the offence,

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seriousness as also gravity thereof may be taken into consideration. The courts must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the Negotiable Instruments Act, the same may not lead to injustice or mistaken conviction. It is for the aforementioned reasons that we have taken into consideration the decisions operating in the field where the difficulty of proving a negative has been emphasised. It is not suggested that a negative can never be proved but there are cases where such difficulties are faced by the accused e.g. honest and reasonable mistake of fact. In a recent article "The Presumption of Innocence and Reverse Burdens: A Balancing Duty" published in 2007 CLJ (March Part) 142 it has been stated:

> "In determining whether a reverse burden is compatible with the presumption of innocence regard should also be had to the pragmatics of proof. How difficult would it be for the prosecution to prove guilt without the reverse burden? How easily could an innocent defendant discharge the reverse burden? But courts will not allow these pragmatic considerations to override the legitimate rights of the defendant. Pragmatism will have greater sway where the reverse burden would not pose the risk of great injustice--- where the offence is not too serious or the reverse burden only concerns a matter incidental to guilt. And greater weight will be given to prosecutorial efficiency in the regulatory environment."

45. We are not oblivious of the fact that the said provision has been inserted to regulate the growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters and to safeguard the faith of the creditor in the drawer of the cheque which is essential to the economic life of a developing country like India. This, however, shall not mean that the courts shall put a blind eye to the ground realities. Statute mandates raising of presumption but it stops at that. It does not say how presumption drawn should be held to have rebutted. Other important principles of legal jurisprudence, namely, presumption of innocence as human rights and the doctrine of reverse burden introduced by Section 139 should be delicately balanced. Such balancing acts, indisputably would largely depend upon the factual matrix of each case, the materials brought on record and having regard to legal principles governing the same.

... "

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51. Relying on the said decision, learned counsel for the respondent-accused further submitted that the presumption of innocence is a human right and everyone charged with a criminal offence shall be presumed innocent, until proved guilty according to law. The Court must be on guard to see that merely on the application of presumption as contemplated under Section 139 of the N.I. Act, the same may not lead to injustice or mistaken conviction. The statute mandates raising of presumption, but it stops at that. It does not say how presumption drawn should be held to have rebutted. Another important principle of legal jurisprudence is that presumption of innocence as human rights and the doctrine of reverse burden, introduced by Section 139 of the N.I. Act, should be delicately balanced.

52. There is no quarrel over the said proposition. But in the present case, while considering Exs.P-3, 5 and 9 and Ex.C-1 promissory note, this Court is of the opinion that Exs.P-7 and P-8 cheques, post-dated 31.3.1998, but issued, on 15.12.1997, were issued only for the discharge of the loan borrowed by the respondent-accused from the appellant-complainant, under Ex.C-1 promissory note.

53. The theory that the cheques Exs.P-7 and P-8 have been issued to the appellant-complainant to facilitate him to escape from the clutches of the Income Tax Department, does not merit acceptance.

54. Further, one more point to be noticed is that as soon as the notice has been issued by the appellant-complainant under Ex.P-13, in reply, Ex.P-14 has been given by the respondent-accused. In Ex.P-14, the respondent-accused has stated that, " ... The cheques under consideration are given as additional security for payment of Interest periodically and they do not satisfy the requirements of Sec.138 of the Negotiable Instruments Act or Sec.420 of the I.P.C."

55. At this juncture, learned counsel for the respondent-accused would rely upon the decision of this Court reported in 1999 (I) CTC 6 (Balaji Seafoods Exports (India) Ltd. Vs. Mac Industries Ltd.), wherein it was held that, " ... an undated cheque having been given only as security, the provision of Section 138 of the Negotiable Instruments Act are not at all attracted and hence, the complaint against the accused under Section 138 of the Negotiable Instruments Act cannot be maintained at all."

56. But here, in this case, as noted in previous paragraphs, Ex.C-1 promissory note, is true and genuine and the issuance of Exs.P-7 and P-8 cheques have been proved by way of documents Exs.P-3, P-5 and P-9, which were written by the accused himself and in such circumstances, there is no evidence to show that Exs.P-7 and P-8 cheques were given for the security purpose. Per contra, the defence of the respondent-accused is that Exs.P-7 and P-8 cheques were given

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only to help the appellant-complainant to facilitate him to escape from the Income Tax problem. So, the said decision is not applicable.

57. Moreover, in Ex.P-14 notice issued on behalf of the respondent-accused, it is stated that, " ... Besides the author of the undertaking which has been extracted in the Notice under reply is your goodself and my Client had to sign the same under the undue influence exerted by you.". In Ex.P-13 notice which has been issued on behalf of the appellant-complainant, it is stated that, "1. on 15.12.1997 you issued two post-dated cheques .."and therein, the cheque numbers, dates and the amounts have been mentioned and in Ex.P-13 notice issued by the appellant-complainant, it is also stated that first cheque represented the principal amount and the second cheque represented the interest thereon as reckoned upto 31.3.1998 and in paragraph 6 of Ex.P-13, it is stated that, "6. The above two cheques were in substitution of the two cheques dt. 30.9.1997 (Nos.746780 & 746779) for Rs.6,60,000/- and for Rs.5,80,000/- respectively, which you could not honour.". In Ex.P-13, the averments in Exs.P-3, 5 and 9 have been extracted. In the above circumstances, there is no denial of those letters and undertakings. In such circumstances, I am of the view that Exs.P-7 and P-8 cheques were issued for existing and subsisting legal liability on the date of issuance of those cheques.

58. Learned counsel for the appellant-complainant relied upon the decision of the Supreme Court reported in AIR 1999 SC 3762 = 1999 (7) SCC 510 (K.Bhaskaran Vs. Sankaran Vaidhyan Balan), wherein, the Supreme Court held as follows:

> "30. It is true, if a judicial magistrate of first class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of Rupees five thousand.
>
> 31. However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision, (Hari Kishan v. Sukhbir Singh, AIR 1988 SC 2127 : 1989 Cri.L.J. 116). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs.5,000/- the Court has power to award compensation to be paid to the complainant."

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59. Relying on the said decision, learned counsel for the appellant-complainant submitted that the appellant-complainant is entitled to compensation under Section 357(3) Cr.P.C. There is no quarrel over the proposition laid down in the said decision and the appellant-complainant is entitled to compensation in respect of the amount due to him.

60. For the reasons stated above:

(a) The Criminal Appeal filed by the appellant-complainant, is allowed.

(b) The judgment of acquittal passed by first appellate Court is set aside.

(c) The conviction passed by the trial Court on the respondent-accused for the offence under Section 138 of the N.I. Act, is confirmed.

(d) The sentence awarded by the trial Court is reduced from one year simple imprisonment to three months' simple imprisonment.

(e) The fine amount of Rs.1,000/- awarded by the trial Court is confirmed.

(f) Besides that, the respondent-accused is directed to pay Rs.13,85,920/- (Rupees thirteen lakhs eighty five thousand nine hundred and twenty only) as compensation, to the appellant-complainant.

(g) Crl.M.Ps. are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

cs

To

1. The III Additional Sessions Judge,
   Chennai.

2. -do- Through The Principal Sessions Judge, Chennai.

3. The VII Metropolitan Magistrate,
   George Town, Chennai.

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4. -do- Through The Chief Metropolitan Magistrate, Chennai.

+ 3 c.cs. to Mr. A.N. Thambidurai, Advocate. S.R.No.15704.

+ 1 c.c. to Mr. C. Rajan, Advocate. S.R.No.15796.

Crl.A.No.294 of 2000

KSJ (CO)
GSK 15.03.2010.

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